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Filing date: **04/10/2017**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91233152
Party	Defendant Carr Spirits, Ltd.
Correspondence Address	AILEEN LAW OPPEDAHL PATENT LAW FIRM LLC P O Box 33270 WESTMINSTER, CO 80233 docket-oppedahl@oppedahl.com
Submission	Answer and Counterclaim
Filer's Name	Micah Gunn
Filer's e-mail	docket-oppedahl@oppedahl.com
Signature	/Micah Gunn/
Date	04/10/2017
Attachments	20170407-TM_Answer2OPPOSITION.pdf(3652280 bytes)

Registrations Subject to the filing

Registration No	602218	Registration date	02/15/1955
Registrant	SAZERAC BRANDS, LLC 10400 LINN STATION ROAD, SUITE 300 LOUISVILLE, KY 40223 UNITED STATES		

Goods/Services Subject to the filing

Class 033. First Use: 1895/01/01 First Use In Commerce: 1895/01/01
All goods and services in the class are requested, namely: ALCOHOLIC COCKTAILS

Grounds for Cancellation

Abandonment	Trademark Act Section 14(3)		
The mark is or has become generic	Trademark Act Sections 14(3), or Section 23 if on Supplemental Register		
Registration No	4396428	Registration date	09/03/2013
Registrant	SAZERAC BRANDS, LLC 10400 LINN STATION ROAD, SUITE 300 LOUISVILLE, KY 40223 UNITED STATES		

Goods/Services Subject to the filing

Class 033. First Use: 2013/05/14 First Use In Commerce: 2013/05/14
All goods and services in the class are requested, namely: A kit containing rye whiskey, PEYCHAUD'S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 87/069,842
For the Trademark DREAMSICLE
Published in the Official Gazette on November 1, 2016

SAZERAC BRANDS, LLC)	
)	
Opposer, Registrant,)	Opposition No. 91233152
)	
v.)	
)	
CARR SPIRITS, LTD.,)	
)	
Applicant, Petitioner.)	
_____)	
_____)	

ANSWER TO NOTICE OF OPPOSITION

Carr Sprits, LTD., (“Carr”), a limited liability company existing under the laws of the State of Colorado, having a principal place of business at 70008 Weld County Road 132, New Raymer, CO 80742 hereby answers Opposer Sazerac Brands, LLC’s (“Sazerac”) Notice of Opposition.

The numbered allegations contained in Sazerac’s Notice of Opposition are answered as follows:

1. Deny.
2. Carr admits the allegations of paragraph 2.
3. Carr lacks sufficient information to admit or deny the allegations contained in paragraph 3 of the Notice of Opposition and therefore denies the same.
4. Carr denies the allegations of paragraph 4.

ALLEGED FIRST CLAIM FOR RELIEF

5. Carr incorporates by reference the answers set forth in paragraphs 1 – 4, *supra*, as if fully set forth herein.
6. Carr denies the allegations of paragraph 6.

7. Carr lacks sufficient information to admit or deny the allegations contained in paragraph 7 of the Notice of Opposition and therefore denies the same.
8. Carr lacks sufficient information to admit or deny the allegations contained in paragraph 8 of the Notice of Opposition and therefore denies the same.
9. Carr denies the allegations of paragraph 9.
10. Carr denies the allegations of paragraph 10.
11. Carr denies the allegations of paragraph 11.

Any remaining allegations do not require an admission or denial by Carr. To the extent that a response is required, the allegations are denied. Unless specifically admitted herein, all allegations are denied. Carr further denies that Sazerac is entitled to any relief, including the relief requested in the petition.

FIRST DEFENSE

Opposer, Sazerac Brands LLC, lacks standing to oppose the registration of DREAMSICLE. Sazerac has not pleaded any law or facts to establish that it will be damaged by registration of the Applicant's Mark. In paragraph 1, Sazerac *Brands* LLC merely alleges that its parent company Sazerac *Company* Inc. markets and sells distilled spirits. There is nothing of the record to indicate that privity exists between Sazerac Brands LLC and Sazerac Company Inc. sufficient to bestow standing upon Sazerac Brands LLC.

Pursuant to Trademark Act § 5 and Trademark Act § 45, 15 U.S.C. § 1055, 15 U.S.C. § 1127, and TMBP 303.05, the showing of privity should be in the form of a recitation of the facts on which the claim of privity is based, and must be submitted either with the Opposition, or during a period of time allowed by the Board.

Furthermore, Opposer, Sazerac Brands LLC has misrepresented and confused the record by alleging in paragraph 1 that "Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century". Upon information and belief Sazerac Brands LLC has only been registered since June 24, 2014 and has made no allegation that it markets or sells alcoholic beverages or distilled spirits.

SECOND DEFENSE

Opposer has not stated a claim upon which relief can be granted and, therefore, the present Opposition should be dismissed.

THIRD DEFENSE

Opposer will not be damaged by the registration of DREAMSICLE. As stated in the FIRST DEFENSE and incorporated by reference, Opposer, Sazerac Brands LLC has not put forth a sufficient showing of privity with Sazerac Company Inc. to establish that it will be damaged by Registration of Applicant's Mark. Opposer does not even allege that it engages in or conducts business in the alcohol industry. Sazerac merely alleges that its parent company Sazerac Company Inc. markets and sells distilled spirits. Opposer has not set forth any facts to support the allegation that the registration of Applicant's Mark would be detrimental to its interests.

FOURTH DEFENSE

Opposer has not pleaded any law or facts that justify the rejection of the Application, Opposer's opposition to the Application, or a refusal to register Applicant's Mark.

FIFTH DEFENSE

Applicant's Mark DREAMSICLE is not a generic term for food and beverage products with a mixture of orange and vanilla or cream flavoring.

SIXTH DEFENSE

Applicant's Mark DREAMSICLE is not descriptive of any characteristic of distilled spirits.

SEVENTH DEFENSE

Applicant's Mark DREAMSICLE as used by Applicant functions as a trademark and source identifier of goods.

WHEREFORE, having fully answered the Opposition, Applicant Carr respectfully requests the following relief:

- i. that the Opposition be dismissed and/or denied in its entirety;
- ii. that judgment be entered in favor of Carr;
- iii. that a registration be issued to Carr for Applicant's Mark DREAMSICLE as applied for in application serial 87/069,842; and
- iv. that Carr be granted such other and further relief as the Board deems just and proper.

FIRST PETITION FOR CANCELLATION

Counterclaimant Petitioner, Carr Sprits, LTD., (“Carr”) a limited liability company existing under the laws of the State of Colorado, having a principal place of business at 70008 Weld County Road 132, New Raymer, CO 80742 believes its interests will be damaged by the continued existence of the Mark SAZERAC, as registered for in U.S. Trademark Registration No. 0602218 (“Registration `218”) and owned by Sazerac Brands LLC (“Sazerac”). Carr hereby petitions to cancel Registration `218.

As grounds therefor it is alleged that:

1. Carr is a company that markets and sells a number of different distilled spirits through various channels of commerce including bars, restaurants, and liquor stores. Carr’s distilled spirits may be used to make alcoholic cocktails.
2. Upon information and belief, on February 15, 1955, Registration `218 was registered for “alcoholic cocktails”.
3. Carr is informed and believes, and on that basis alleges, that the term “sazerac” as used by the relevant consumer of alcoholic cocktails is the common term or class name of an alcoholic cocktail comprising at least, exactly, or at most the following ingredients:
 - a. a non-zero quantity of a sugar;
 - b. a non-zero quantity of a type of whiskey or, alternatively, a non-zero quantity of a type of bourbon;
 - c. a non-zero quantity of a type of bitters;
 - d. a non-zero quantity of a product derived from a lemon fruit; and
 - e. a non-zero quantity of an anise-flavored liquor.
4. Carr is informed and believes, and on that basis alleges, that the term “sazerac” as used by the relevant consumer of alcoholic cocktails is the common term or class name of an alcoholic cocktail that contains alternative amounts and ingredients to those listed in paragraph 3.
5. Upon information and belief, a “sazerac” cocktail may be ordered at establishments that serve alcoholic cocktails throughout the United States.
6. Upon information and belief, pursuant to La. R.S. § 33:1420.2, “The Sazerac” is the official cocktail of the city of New Orleans.

7. Upon information and belief, pursuant to La. R.S. § 33:1420.2, the Registrant has never challenged the city of New Orleans' use of "The Sazerac" on official documents of the city of New Orleans and in association with the insignia of the city of New Orleans.
8. Upon information and belief, Registration `218 has never been asserted or alleged in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States.
9. Upon information and belief, Registration `218 has not been asserted or alleged by Sazerac in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States within the past twenty years.
10. Upon information and belief, Registration `218 has not been asserted or alleged by Sazerac in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States within the past ten years.
11. As set forth in detail below, on information and belief, the term "sazerac" is the generic term for a specific type of alcoholic cocktail called the sazerac, which may be made with a mixture of: (1) whiskey or bourbon; (2) sugar; (3) a type of bitters; (4) a citrus product; and (5) an anise flavored liquor; or alternative ingredients and combinations thereof. The term "sazerac" as used by the relevant consumer with relation to the goods "alcoholic cocktail" does not function as a trademark and is unable to serve as a source identifier for the goods and services of Registration `218. As a present or potential competitor of Sazerac, Carr believes that it will be damaged by the continued existence of Registration `218.

FIRST COUNTERCLAIM FOR RELIEF

12. Carr incorporates by reference Paragraphs 1 through 11, inclusively, as if fully set forth herein.
13. Upon information and belief, the term "Sazerac" is understood by the relevant purchasing public to be the common term or class name for a specific type of alcoholic cocktail having the flavor of a sazerac.
14. Upon information and belief, numerous third party companies in the restaurant and bar

industry currently use the term “sazerac” other than as a trademark to accurately identify the flavor profile and general composition of a type of alcoholic cocktail. Sazerac has not made substantially exclusive use of the term “sazerac” in connection with “alcoholic cocktails”.

15. Upon information and belief, the Mark SAZERAC is not capable of serving as a source identifier for the goods and services of the Registration, and Sazerac has not made sufficient efforts to promote and protect its Mark as a source identifier for the goods and services of Registration `218.
16. The continued existence of Registration `218 will interfere with the rights of those affiliated with the alcohol industry and the relevant public consumer of alcoholic cocktails to identify a type of alcoholic cocktail, namely, a sazerac.
17. Sazerac’s Mark of Registration `218 is in violation of 15 U.S.C. §1064 as being generic because it is the common term or class name for a specific type of alcoholic cocktail, namely, the sazerac. Accordingly, Registration `218 should be canceled.
18. Sazerac has not made any efforts to prevent the Mark of Registration `218 from becoming abandoned under 15 U.S.C. §1127. Accordingly, Registration `218 should be canceled.

WHEREFORE, Carr respectfully requests that Registration No. 0602218 be canceled and that this Petition be sustained in favor of Petitioner.

SECOND PETITION FOR CANCELLATION

Counterclaimant Petitioner, Carr believes its interests will be damaged by the continued existence of the Mark SAZERAC, as registered for in U.S. Trademark Registration No. 4396428 (“Registration `428”) and owned by Sazerac. Carr hereby petitions to cancel Registration `428.

As grounds therefor it is alleged that:

1. Carr is a company that markets and sells a number of different distilled spirits through various channels of commerce including bars, restaurants, and liquor stores. Carr’s distilled spirits may now or in the future be sold as kits for making alcoholic cocktails.
2. Upon information and belief, on September 3, 2013, Registration `428 was registered for “A kit containing rye whiskey, PEYCHAUD’S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail”.

3. Carr is informed and believes, and on that basis alleges, that the term “sazerac” as used by the relevant consuming public is the common term or class name of a composition comprising at least the following ingredients:
 - a. a non-zero quantity of a type of whiskey or, alternatively, a non-zero quantity of a type of bourbon;
 - b. a non-zero quantity of a type of bitters;
 - c. a non-zero quantity of an anise-flavored liquor.
4. Carr is informed and believes, and on that basis alleges, that the term “sazerac” as used by the relevant consuming public can also be the common term or class name of a composition comprising alternative amounts and ingredients to those listed in paragraph 3.
5. Upon information and belief, it is possible for a liquor store in the United States to simultaneously sell the following:
 - a. rye whiskey
 - b. Peychaud’s brand alcoholic bitters; and
 - c. Herbsaint brand liqueur.
6. Upon information and belief, the following ingredients are used for preparing an alcoholic cocktail called the “sazerac”:
 - a. rye whiskey
 - b. Peychaud’s brand alcoholic bitters; and
 - c. Herbsaint brand liqueur.
7. The goods of Registration `428 are sold in liquor stores in the United States.
8. Upon information and belief, pursuant to La. R.S. § 33:1420.2, “The Sazerac” is the official cocktail of the city of New Orleans.
9. Upon information and belief, pursuant to La. R.S. § 33:1420.2, the Registrant has never challenged the city of New Orleans’ use of “The Sazerac” on official documents of the city of New Orleans and in association with the insignia of the city of New Orleans.
10. Upon information and belief, Registration `428 has never been asserted or alleged in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States.

11. Upon information and belief, Registration `428 has not been asserted or alleged by Sazerac in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States within the past five years.
12. As set forth in detail below, on information and belief, the term “sazerac” is the generic term for a specific type of alcoholic cocktail called the sazerac, which may be made with a mixture of: (1) whiskey; (2) Peychaud’s brand alcoholic bitters; (3) an anise-flavored liquor such as Herbsaint brand liqueur; or alternative ingredients and combinations thereof. The term “sazerac” as used by the relevant consumer with relation to the goods “A kit containing rye whiskey, PEYCHAUD’S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail” does not function as a trademark and is unable to serve as a source identifier for the goods and services of Registration `428. As a present or potential competitor of Sazerac, Carr believes that it will be damaged by the continued existence of Registration `428.

SECOND COUNTERCLAIM FOR RELIEF

13. Carr incorporates by reference Paragraphs 1 through 12, inclusively, as if fully set forth herein.
14. Upon information and belief, the term “sazerac” is understood by the relevant purchasing public to be the common term or class name for a specific collection of ingredients which may include: (1) whiskey; (2) Peychaud’s brand alcoholic bitters; and (3) an anise-flavored liquor such as Herbsaint brand liqueur.
15. Upon information and belief, the relevant consuming public and numerous third party companies in the liquor distribution industry currently use the term “sazerac” other than as a trademark to accurately identify the ingredients which are used to concoct an alcoholic cocktail called the “sazerac”. The goods of Registration `428 are ingredients used to concoct an alcoholic cocktail called a “sazerac”. Sazerac has not made substantially exclusive use of the term “sazerac” in connection with kits or mere liquor store purchases “containing rye whiskey, PEYCHAUD’S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail”.
16. Upon information and belief, the Mark SAZERAC is not capable of serving as a source

identifier for the goods and services of Registration `428, and Sazerac has not made sufficient efforts to promote and protect its Mark as a source identifier for the goods and services of Registration `428.

17. The continued existence of Registration `428 will interfere with the rights of those affiliated with the alcohol industry and the relevant public consumer to identify kits for making an alcoholic cocktail called the “sazerac”.
18. Sazerac’s Mark of Registration `428 is in violation of 15 U.S.C. §1064 as being generic because it is the common term or class name for quickly identifying the ingredients that make up an alcoholic cocktail called the “sazerac”. Accordingly, Registration `428 should be canceled.
19. Sazerac has not made any efforts to prevent the Mark of Registration `428 from becoming abandoned under 15 U.S.C. §1127. Accordingly, Registration `428 should be canceled.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Answer and Petitions for Cancellation** has been served on Registrant's correspondent address by mailing said copy on this day, 4/10/2017, via email to:

Sazerac Brands, LLC
attn: Judd Lauter
Cooley LLP
1299 Pennsylvania Ave., NW Suite 700
Washington, DC 20004
jlauter@cooley.com, trademarks@cooley.com, vbadolato@cooley.com, pwillsey@cooley.com

Micah Gunn

/Micah Gunn/

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No. 87/069,842
For the Trademark DREAMSICLE
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SAZERAC BRANDS, LLC)	
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The numbered allegations contained in Sazerac's Notice of Opposition are answered as follows:

1. Deny.
2. Carr admits the allegations of paragraph 2.
3. Carr lacks sufficient information to admit or deny the allegations contained in paragraph 3 of the Notice of Opposition and therefore denies the same.
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ALLEGED FIRST CLAIM FOR RELIEF

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6. Carr denies the allegations of paragraph 6.

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Any remaining allegations do not require an admission or denial by Carr. To the extent that a response is required, the allegations are denied. Unless specifically admitted herein, all allegations are denied. Carr further denies that Sazerac is entitled to any relief, including the relief requested in the petition.

FIRST DEFENSE

Opposer, Sazerac Brands LLC, lacks standing to oppose the registration of DREAMSICLE. Sazerac has not pleaded any law or facts to establish that it will be damaged by registration of the Applicant's Mark. In paragraph 1, Sazerac *Brands* LLC merely alleges that its parent company Sazerac *Company* Inc. markets and sells distilled spirits. There is nothing of the record to indicate that privity exists between Sazerac Brands LLC and Sazerac Company Inc. sufficient to bestow standing upon Sazerac Brands LLC.

Pursuant to Trademark Act § 5 and Trademark Act § 45, 15 U.S.C. § 1055, 15 U.S.C. § 1127, and TMBP 303.05, the showing of privity should be in the form of a recitation of the facts on which the claim of privity is based, and must be submitted either with the Opposition, or during a period of time allowed by the Board.

Furthermore, Opposer, Sazerac Brands LLC has misrepresented and confused the record by alleging in paragraph 1 that "Sazerac has marketed and sold alcoholic beverages and distilled spirits in the United States for over a century". Upon information and belief Sazerac Brands LLC has only been registered since June 24, 2014 and has made no allegation that it markets or sells alcoholic beverages or distilled spirits.

SECOND DEFENSE

Opposer has not stated a claim upon which relief can be granted and, therefore, the present Opposition should be dismissed.

THIRD DEFENSE

Opposer will not be damaged by the registration of DREAMSICLE. As stated in the FIRST DEFENSE and incorporated by reference, Opposer, Sazerac Brands LLC has not put forth a sufficient showing of privity with Sazerac Company Inc. to establish that it will be damaged by Registration of Applicant's Mark. Opposer does not even allege that it engages in or conducts business in the alcohol industry. Sazerac merely alleges that its parent company Sazerac Company Inc. markets and sells distilled spirits. Opposer has not set forth any facts to support the allegation that the registration of Applicant's Mark would be detrimental to its interests.

FOURTH DEFENSE

Opposer has not pleaded any law or facts that justify the rejection of the Application, Opposer's opposition to the Application, or a refusal to register Applicant's Mark.

FIFTH DEFENSE

Applicant's Mark DREAMSICLE is not a generic term for food and beverage products with a mixture of orange and vanilla or cream flavoring.

SIXTH DEFENSE

Applicant's Mark DREAMSICLE is not descriptive of any characteristic of distilled spirits.

SEVENTH DEFENSE

Applicant's Mark DREAMSICLE as used by Applicant functions as a trademark and source identifier of goods.

WHEREFORE, having fully answered the Opposition, Applicant Carr respectfully requests the following relief:

- i. that the Opposition be dismissed and/or denied in its entirety;
- ii. that judgment be entered in favor of Carr;
- iii. that a registration be issued to Carr for Applicant's Mark DREAMSICLE as applied for in application serial 87/069,842; and
- iv. that Carr be granted such other and further relief as the Board deems just and proper.

FIRST PETITION FOR CANCELLATION

Counterclaimant Petitioner, Carr Sprints, LTD., ("Carr") a limited liability company existing under the laws of the State of Colorado, having a principal place of business at 70008 Weld County Road 132, New Raymer, CO 80742 believes its interests will be damaged by the continued existence of the Mark SAZERAC, as registered for in U.S. Trademark Registration No. 0602218 ("Registration `218") and owned by Sazerac Brands LLC ("Sazerac"). Carr hereby petitions to cancel Registration `218.

As grounds therefor it is alleged that:

1. Carr is a company that markets and sells a number of different distilled spirits through various channels of commerce including bars, restaurants, and liquor stores. Carr's distilled spirits may be used to make alcoholic cocktails.
2. Upon information and belief, on February 15, 1955, Registration `218 was registered for "alcoholic cocktails".
3. Carr is informed and believes, and on that basis alleges, that the term "sazerac" as used by the relevant consumer of alcoholic cocktails is the common term or class name of an alcoholic cocktail comprising at least, exactly, or at most the following ingredients:
 - a. a non-zero quantity of a sugar;
 - b. a non-zero quantity of a type of whiskey or, alternatively, a non-zero quantity of a type of bourbon;
 - c. a non-zero quantity of a type of bitters;
 - d. a non-zero quantity of a product derived from a lemon fruit; and
 - e. a non-zero quantity of an anise-flavored liquor.
4. Carr is informed and believes, and on that basis alleges, that the term "sazerac" as used by the relevant consumer of alcoholic cocktails is the common term or class name of an alcoholic cocktail that contains alternative amounts and ingredients to those listed in paragraph 3.
5. Upon information and belief, a "sazerac" cocktail may be ordered at establishments that serve alcoholic cocktails throughout the United States.
6. Upon information and belief, pursuant to La. R.S. § 33:1420.2, "The Sazerac" is the official cocktail of the city of New Orleans.

7. Upon information and belief, pursuant to La. R.S. § 33:1420.2, the Registrant has never challenged the city of New Orleans' use of "The Sazerac" on official documents of the city of New Orleans and in association with the insignia of the city of New Orleans.
8. Upon information and belief, Registration `218 has never been asserted or alleged in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States.
9. Upon information and belief, Registration `218 has not been asserted or alleged by Sazerac in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States within the past twenty years.
10. Upon information and belief, Registration `218 has not been asserted or alleged by Sazerac in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States within the past ten years.
11. As set forth in detail below, on information and belief, the term "sazerac" is the generic term for a specific type of alcoholic cocktail called the sazerac, which may be made with a mixture of: (1) whiskey or bourbon; (2) sugar; (3) a type of bitters; (4) a citrus product; and (5) an anise flavored liquor; or alternative ingredients and combinations thereof. The term "sazerac" as used by the relevant consumer with relation to the goods "alcoholic cocktail" does not function as a trademark and is unable to serve as a source identifier for the goods and services of Registration `218. As a present or potential competitor of Sazerac, Carr believes that it will be damaged by the continued existence of Registration `218.

FIRST COUNTERCLAIM FOR RELIEF

12. Carr incorporates by reference Paragraphs 1 through 11, inclusively, as if fully set forth herein.
13. Upon information and belief, the term "Sazerac" is understood by the relevant purchasing public to be the common term or class name for a specific type of alcoholic cocktail having the flavor of a sazerac.
14. Upon information and belief, numerous third party companies in the restaurant and bar

industry currently use the term "sazerac" other than as a trademark to accurately identify the flavor profile and general composition of a type of alcoholic cocktail. Sazerac has not made substantially exclusive use of the term "sazerac" in connection with "alcoholic cocktails".

15. Upon information and belief, the Mark SAZERAC is not capable of serving as a source identifier for the goods and services of the Registration, and Sazerac has not made sufficient efforts to promote and protect its Mark as a source identifier for the goods and services of Registration `218.
16. The continued existence of Registration `218 will interfere with the rights of those affiliated with the alcohol industry and the relevant public consumer of alcoholic cocktails to identify a type of alcoholic cocktail, namely, a sazerac.
17. Sazerac's Mark of Registration `218 is in violation of 15 U.S.C. §1064 as being generic because it is the common term or class name for a specific type of alcoholic cocktail, namely, the sazerac. Accordingly, Registration `218 should be canceled.
18. Sazerac has not made any efforts to prevent the Mark of Registration `218 from becoming abandoned under 15 U.S.C. §1127. Accordingly, Registration `218 should be canceled.

WHEREFORE, Carr respectfully requests that Registration No. 0602218 be canceled and that this Petition be sustained in favor of Petitioner.

SECOND PETITION FOR CANCELLATION

Counterclaimant Petitioner, Carr believes its interests will be damaged by the continued existence of the Mark SAZERAC, as registered for in U.S. Trademark Registration No. 4396428 ("Registration `428") and owned by Sazerac. Carr hereby petitions to cancel Registration `428.

As grounds therefor it is alleged that:

1. Carr is a company that markets and sells a number of different distilled spirits through various channels of commerce including bars, restaurants, and liquor stores. Carr's distilled spirits may now or in the future be sold as kits for making alcoholic cocktails.
2. Upon information and belief, on September 3, 2013, Registration `428 was registered for "A kit containing rye whiskey, PEYCHAUD'S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail".

3. Carr is informed and believes, and on that basis alleges, that the term "sazerac" as used by the relevant consuming public is the common term or class name of a composition comprising at least the following ingredients:
 - a. a non-zero quantity of a type of whiskey or, alternatively, a non-zero quantity of a type of bourbon;
 - b. a non-zero quantity of a type of bitters;
 - c. a non-zero quantity of an anise-flavored liquor.
4. Carr is informed and believes, and on that basis alleges, that the term "sazerac" as used by the relevant consuming public can also be the common term or class name of a composition comprising alternative amounts and ingredients to those listed in paragraph 3.
5. Upon information and belief, it is possible for a liquor store in the United States to simultaneously sell the following:
 - a. rye whiskey
 - b. Peychaud's brand alcoholic bitters; and
 - c. Herbsaint brand liqueur.
6. Upon information and belief, the following are ingredients are used for preparing an alcoholic cocktail called the "sazerac":
 - a. rye whiskey
 - b. Peychaud's brand alcoholic bitters; and
 - c. Herbsaint brand liqueur.
7. The goods of Registration '428 are sold in liquor stores in the United States.
8. Upon information and belief, pursuant to La. R.S. § 33:1420.2, "The Sazerac" is the official cocktail of the city of New Orleans.
9. Upon information and belief, pursuant to La. R.S. § 33:1420.2, the Registrant has never challenged the city of New Orleans' use of "The Sazerac" on official documents of the city of New Orleans and in association with the insignia of the city of New Orleans.
10. Upon information and belief, Registration '428 has never been asserted or alleged in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States.

11. Upon information and belief, Registration '428 has not been asserted or alleged by Sazerac in a proceeding before the Trademark Trial and Appeal Board, the US Court of Appeals for the Federal Circuit, or any other state or federal court within the United States within the past five years.
12. As set forth in detail below, on information and belief, the term "sazerac" is the generic term for a specific type of alcoholic cocktail called the sazerac, which may be made with a mixture of: (1) whiskey; (2) Peychaud's brand alcoholic bitters; (3) an anise-flavored liquor such as Herbsaint brand liqueur; or alternative ingredients and combinations thereof. The term "sazerac" as used by the relevant consumer with relation to the goods "A kit containing rye whiskey, PEYCHAUD'S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail" does not function as a trademark and is unable to serve as a source identifier for the goods and services of Registration '428. As a present or potential competitor of Sazerac, Carr believes that it will be damaged by the continued existence of Registration '428.

SECOND COUNTERCLAIM FOR RELIEF

13. Carr incorporates by reference Paragraphs 1 through 12, inclusively, as if fully set forth herein.
14. Upon information and belief, the term "sazerac" is understood by the relevant purchasing public to be the common term or class name for a specific collection of ingredients which may include: (1) whiskey; (2) Peychaud's brand alcoholic bitters; and (3) an anise-flavored liquor such as Herbsaint brand liqueur.
15. Upon information and belief, the relevant consuming public and numerous third party companies in the liquor distribution industry currently use the term "sazerac" other than as a trademark to accurately identify the ingredients which are used to concoct an alcoholic cocktail called the "sazerac". The goods of Registration '428 are ingredients used to concoct an alcoholic cocktail called a "sazerac". Sazerac has not made substantially exclusive use of the term "sazerac" in connection with kits or mere liquor store purchases "containing rye whiskey, PEYCHAUD'S brand alcoholic bitters, and HERBSAINT brand liqueur for preparing an alcoholic cocktail".
16. Upon information and belief, the Mark SAZERAC is not capable of serving as a source

identifier for the goods and services of Registration `428, and Sazerac has not made sufficient efforts to promote and protect its Mark as a source identifier for the goods and services of Registration `428.

17. The continued existence of Registration `428 will interfere with the rights of those affiliated with the alcohol industry and the relevant public consumer to identify kits for making an alcoholic cocktail called the "sazerac".
18. Sazerac's Mark of Registration `428 is in violation of 15 U.S.C. §1064 as being generic because it is the common term or class name for quickly identifying the ingredients that make up an alcoholic cocktail called the "sazerac". Accordingly, Registration `428 should be canceled.
19. Sazerac has not made any efforts to prevent the Mark of Registration `428 from becoming abandoned under 15 U.S.C. §1127. Accordingly, Registration `428 should be canceled.

WHEREFORE, Carr respectfully requests that Registration No. 4,396,428 be canceled and that this Petition be sustained in favor of Petitioner.

Respectfully submitted,

OPPEDAHL PATENT LAW FIRM LLC

Micah Gunn

/micahgunn/

Aileen Law

/alaw/

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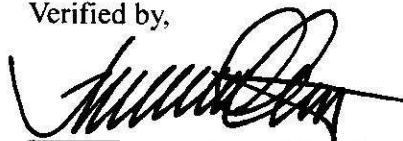
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ATTORNEY FOR PETITIONER

Carr Spirits, LTD

Verified by,



4/9/2017

Tom Carr

Date

President and CEO

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **Answer and Petitions for Cancellation** has been served on Registrant's correspondent address by mailing said copy on this day, 4/10/2017, via email to:

Sazerac Brands, LLC
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jlauter@cooley.com, trademarks@cooley.com, vbadolato@cooley.com, pwillsey@cooley.com

Micah Gunn

/Micah Gunn/